



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-830]

Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: We preliminarily determine that carbon and certain alloy steel wire rod (wire rod) with an actual diameter between 4.75 mm and 5.00 mm produced in Mexico and exported to the United States by Deacero S.A. de C.V. (Deacero) is circumventing the antidumping duty order on wire rod from Mexico (Wire Rod Order) within the meaning of section 781(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(i).<sup>1</sup>

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, Program Manager, or Jolanta Lawska, Trade Analyst, Office 3, Antidumping and Countervailing Duty Operations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6071 or (202) 482-8362, respectively.

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<sup>1</sup> See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, 67 FR 65945 (October 29, 2002) (Wire Rod Order).

## SUPPLEMENTARY INFORMATION

### Background

On June 8, 2011, the Department of Commerce (the Department) initiated a circumvention inquiry into whether Deacero S.A. de C.V. (Deacero) and Ternium Mexico S.A. de C.V. (Ternium) shipped wire rod with an actual between 4.75 and 5.00 mm<sup>2</sup> in a manner that constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope.<sup>3</sup> In its June 15, 2011, submission Ternium stated that it does not produce or sell wire rod with an actual diameter between 4.75 and 5.00 mm. Ternium included a product brochure which lists the diameter ranges and diameter tolerances of its wire products. The brochure does not include wire rod with actual diameters less than 5.5 mm.

On July 22, 2011, Deacero submitted its response to the Department's June 1, 2011, questionnaire. See Deacero's July 22, 2011, Questionnaire Response (First QNR Response). On July 27, 2011, Illinois Tool Works Inc. (ITW) submitted comments in support of Deacero's claim that the products at issue do not constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope.

On August 16, 2011, ArcelorMittal USA LLC, Gerdau Ameristeel U.S. Inc, Rocky Mountain Steel, and Members of the Wire Rod Producers Coalition (collectively, the Coalition) submitted comments on the First QNR Response. On August 25, 2011, Nucor Corporation and Cascade Steel Rolling Mills, Inc. (collectively, Petitioners) submitted comments on the First QNR Response. On August 26, 2011, Deacero responded to the Coalition's August 16, 2011,

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<sup>2</sup> The Department is using slightly different wording in this Federal Register notice from the wording in the initiation notice to clarify that Deacero's shipments of 4.75 mm wire rod are covered by this circumvention inquiry.

<sup>3</sup> See Carbon and Certain Alloy Steel Wire Rod From Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order, 76 FR 33218 (June 8, 2011) (Initiation).

submission. On September 2, 2011, ITW submitted comments in response to the submissions of the Coalition and Petitioners. On September 6, 2011, Deacero responded to Petitioners' August 25, 2011, comments. On September 9, 2011, the Coalition responded to Deacero's August 26, 2011, submission. On October 5, 2011, Deacero submitted its response to the Department's September 7, 2011, questionnaire. See Deacero's October 5, 2011, Questionnaire Response (Second QNR Response). On October 17, 2011, Petitioners submitted comments regarding the Second QNR Response. On October 18, 2011, the Coalition submitted comments regarding the Second QNR Response.

On November 18, 2011, Deacero submitted comments for the Department to consider in preparing the preliminary determination. On December 2, 2011, the Coalition responded to Deacero's November 18, 2011, submission. On December 5, 2011, Petitioners submitted comments for the Department's preliminary determination in the minor alteration circumvention inquiry. The Department will consider these submissions for the final determination of this circumvention inquiry.

#### Scope of the Order

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e.,

products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing

by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as “tire cord quality” or “tire bead quality” indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products within the scope of this order are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

#### Scope of the Circumvention Inquiry

The merchandise subject to this circumvention inquiry consists of wire rod with actual an diameter between 4.75 mm and 5.00 mm. This merchandise produced by Deacero, entered the United States under Harmonized Tariff Schedule (HTS) classification 7213.91.3093.

#### Statutory and Regulatory Framework

Section 781(c) of the Act, dealing with minor alterations of merchandise, states that: (1) In general: The class or kind of merchandise subject to (A) an investigation under this title, (B) an antidumping duty order issued under section 736, (C) a finding issued under the Antidumping Act, 1921, or (D) a countervailing duty order issued under section 706 or section 303, shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification. (2) Exception. Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

As stated under 19 CFR 351.225(a), issues may arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in the Department's determinations must be written in general terms. At other times, a domestic interested party may allege that a change to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues

arise, the Department conducts circumvention inquiries that clarify the scope of an order or suspended investigation with respect to particular products. Pursuant to 19 CFR 351.225(i) and section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

While the statute is silent regarding what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates there are certain factors which should be considered before reaching a circumvention determination. Previous circumvention cases<sup>4</sup> have relied on the factors listed in the Senate Finance Committee report on the Omnibus Trade and Competitiveness Act of 1988 (which amended the Act to include the circumvention provisions contained in section 781 of the Act), which states:

{i}n applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.<sup>5</sup>

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<sup>4</sup> See, e.g., Final Determination of Circumvention of the Antidumping Order: Cut-to-Length Carbon Steel Plate From Canada, 66 FR 7617, 7618 (January 24, 2001)) (Canadian Plate), and accompanying Issued and Decision Memorandum (Canadian Plate Decision Memorandum) at Comment 4, in which the Department discusses its application of the factors discussed in the Senate Finance Committee report; Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan, 68 FR 33676, 33677 (June 5, 2003) (Japanese CORE); and Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 74 FR 40565, 40566 (August 12, 2009)) (Tianjin Plate), and accompanying Issues and Decision Memorandum (Tianjin Plate Decision Memorandum).

<sup>5</sup> Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No.71, 100th Cong., 1st Sess. 100 (1987).

In the case of an allegation of a “minor alteration” under section 781(c) of the Act, it is the Department’s practice to look at the five factors listed in the Senate Finance Committee report to determine if circumvention exists in a particular case.<sup>6</sup>

#### Preliminary Determination

We preliminarily determine that wire rod with an actual diameter between 4.75 mm and 5.0 mm and subject wire rod are indistinguishable in any meaningful sense in terms of overall physical characteristics of the merchandise. By Deacero’s own admission, the 0.25 mm difference in diameter constitutes the sole physical difference between the wire rod products at issue (e.g., 4.75 mm wire rod) and subject wire rod. Our preliminary analysis indicates that other physical characteristics, such as tensile strength, ductility, and chemical content (which determines product grade), do not vary by diameter. In addition, we preliminarily determine that the 0.25 mm difference between the wire rod products at issue and subject wire rod do not alter the expectations of the ultimate users, the use of the merchandise, and the channels of marketing in any meaningful way. We further preliminarily determine that the costs incurred to produce wire rod with a 0.25 mm smaller diameter are not significant. Accordingly, pursuant to section 781(c) of the Act and 19 CFR 351.225(i) we preliminarily determine that shipments of wire rod with an actual diameter between 4.75mm and 5.00 mm by Deacero constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order on wire rod from Mexico.

This affirmative finding applies solely to Deacero because information supplied by Ternium indicates that it did not produce or sell merchandise subject to this circumvention

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<sup>6</sup> See, e.g., Canadian Plate, and Canadian Plate Decision Memorandum at Comment 4.



inquiry.

For further discussion of the Department's preliminary findings, see the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, "Preliminary Results of Minor Alteration Circumvention Inquiry on Carbon and Certain Alloy Steel Wire Rod with an Actual Diameter between 4.75 and 5.00 Millimeters," a proprietary document of which the public version is available via IA ACCESS in room 7046 of the main Commerce Building.

#### Suspension of Liquidation

In accordance with section 351.225(l)(2) of the Department's regulations, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of wire rod with an actual diameter between 4.75 mm and 5.00 mm produced and/or exported by Deacero that are entered, or withdrawn from warehouse, for consumption on or after June 8, 2011, the publication date of the Initiation in the Federal Register. Pursuant to 19 CFR 351.225(l)(2), we will also instruct CBP to require a cash deposit of estimated duties equal to the all others rate of 20.11 percent ad valorem for each unliquidated entry of wire rod with an actual diameter between 4.75 mm and 5.00 mm produced and/or exported by Deacero entered, or withdrawn from warehouse, for consumption on or after June 8, 2011.<sup>7</sup>

#### Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 20 days of the publication of this notice. See 19 CFR 351.225(f)(3). Interested parties may file rebuttal briefs limited to issues raised in the case briefs no later than 10 days after the date on which the case briefs are due. Id. Interested parties may request a hearing within 20 days of the publication of this notice. Interested parties will be notified by the Department of the location and time of any hearing, if one is requested.

This affirmative preliminary circumvention determination is in accordance with section 781(c) of the Act and 19 CFR 351.225.

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Paul Piquado  
Assistant Secretary  
for Import Administration

December 13, 2011  
Date

[FR Doc. 2011-32536 Filed 12/19/2011 at 8:45 am; Publication Date: 12/20/2011]

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<sup>7</sup> Deacero has never been individually examined by the Department during the history of the Order. For this reason Deacero's shipments of subject merchandise are subject to the all others rate.